



# The Attorney General of Texas

November 30, 1981

MARK WHITE  
Attorney General

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Ms. Patti Bizzell  
Texas State Board of Examiners  
of Psychologists  
5555 N. Lamar, Suite H-126  
Austin, Texas 78751

Open Records Decision No. 290

Re: Access under Open Records  
Act to psychologists' licensing  
files

Dear Ms. Bizzell:

1607 Main St., Suite 1400  
Dallas, TX. 75201  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether complaints, charges and actions taken in disciplinary hearings involving licensees of the Texas State Board of Examiners of Psychologists are available to the public. Section 23 of article 4512c, V.T.C.S., provides:

Sec. 23. (a) The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist... upon proof that the psychologist:

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Lubbock, TX. 79401  
806/747-5238

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McAllen, TX. 78501  
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San Antonio, TX. 78205  
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(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or

(2) used drugs or intoxicating liquors to an extent that affects his professional competency; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(4) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(6) for any cause for which the Board shall be authorized to take that action by another section of this Act.

....

(e) The Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal. (Emphasis added).

Acts 1981, 67th Leg., ch. 766, at 2856-57. You have received requests for information regarding disciplinary proceedings affecting several licensees of the board. The requestors seek disclosure of the charges

filed, the board's decision in the matter, and the present status of the licensee.

Section 3(a)(1) of the Open Records Act excepts from disclosure:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

The following statement in article 4512c, section 23(e) would seem to create a category of "information deemed confidential by [statutory] law": "All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged." The usual meaning of "privileged" is "confidential." Black's Law Dictionary 270 (5th ed. 1979). The term refers to communications which are, as a matter of public policy, excepted from disclosure. Communist Party of the United States v. Subversive Activities Control Board, 254 F.2d 314, 321 (D.C. Cir. 1958). For reasons that will become apparent, however, we must conclude that, for purposes of section 23, "privileged" is not tantamount to "confidential."

In literal terms, the declaration of section 23 is applicable to charges, complaints, notices, orders, records and publications "authorized or required by the terms of this Act." (Emphasis added). Thus, it would prohibit disclosure of the roster of licensed psychologists which the board is required to publish annually and which section 18 of the act specifically deems public information. It would except from disclosure the "standards for qualification" of sub-doctoral personnel which section 19 directs the board to set. It would even make confidential the board's annual report required by section 10.

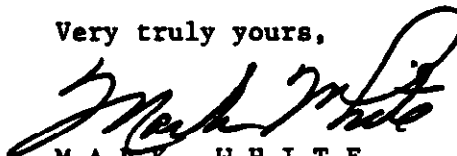
Because of these absurd results, we believe it is clear that the declaration of section 23 was not intended to prohibit disclosure of all board records. It might be argued that, since the declaration appears in section 23, which is concerned exclusively with disciplinary proceedings, its effect should be limited to records which relate to such proceedings. Even if so restricted, however, the declaration conflicts both with specific portions of section 23 and with other law.

Although the declaration deems "notices" to be "privileged," section 23 itself provides that "[p]roceedings for the refusal, suspension, or revocation of a license or certificate or for the reprimand of a person are governed by the Administrative Procedure and Texas Register Act," article 6252-13a, V.T.C.S., as is every "appeal of an action of the Board." "Judicial review of an action of the Board shall be conducted under the substantial evidence rule," with the result that the entire record considered by the court will become public. V.T.C.S. art. 4512c, §23(c), (d). Furthermore, the Open Meetings Act, article 6252-17, V.T.C.S., is applicable to the

original disciplinary proceedings before the board. V.T.C.S. art. 6252-17, §2(a). It has frequently been said that the Open Records Act should be construed in harmony with the Open Meetings Act. Attorney General Opinion H-484 (1974); Open Records Decision Nos. 159 (1977); 68 (1975). Thus, to construe "privileged" in section 23 to mean "confidential" would result in conflicts within section 23 and between section 23 and other statutes. We must conclude that, whatever the legislature intended the term "privileged" to mean, it did not intend that it should be construed to mean "confidential." We note that "privileged" has been used in Texas to refer to those communications which require proof of malice in a libel action. International & Great Northern Railroad Company v. Edmundson, 222 S.W. 181, 183-84 (Tex. Comm'n App. 1920).

Thus, although complaints, charges and actions taken in disciplinary hearings involving board licensees are not excepted from disclosure as "information deemed confidential by [statutory] law," some of the information contained in the files you have submitted to us is excepted as "information deemed confidential by [judicial decision]." V.T.C.S. art. 6252-17a, §3(a)(1). Previous open records decisions have recognized that particular material in a licensing file may be excepted from disclosure by a constitutional or common law right of privacy. Open Records Decision Nos. 215 (1978); 157 (1977). See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 685-87 (Tex. 1976). After examining the files you have submitted to us, it is our opinion that only the following material is excepted from disclosure by a constitutional or common law right of privacy: a portion of the statement of complainant from file number two and the affidavits of the two complainants from file number four. With these exceptions, none of the information in these files is excepted from disclosure under section 3(a)(1).

Very truly yours,



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